

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

Kofi Adomako Ohene KYEI,
Petitioner,

v.

DIVISION OF CHILD SUPPORT,
Respondent.

Office of Administrative Hearings
2019CSP25531; A172588

Submitted July 2, 2021.

Kofi O. Kyei filed the briefs *pro se.*

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Patricia G. Rincon, Assistant Attorney General, filed the brief for respondent.

Before DeVore, Presiding Judge, and DeHoog, Judge, and Mooney, Judge.

DeVORE, P. J.

Affirmed.

DeVORE, P. J.

Petitioner seeks judicial review of the final order of an administrative law judge (ALJ) affirming petitioner's driver's license suspensions as a result of his child support arrearage. *See* ORS 25.750 (occupational or professional licenses subject to suspension upon specified conditions); ORS 25.759 (only three bases for contesting suspension). On appeal, petitioner asserts a nine-point assignment of error. Primarily, he argues that a 2013 order related to prior license suspensions, which was entered in an earlier case in Multnomah County Circuit Court, precluded both a subsequent enforcement judgment for child support in Clackamas County Circuit Court, a matter which is subject to another appeal, and also the license suspension at issue in this particular appeal. Petitioner also argues that the ALJ incorrectly calculated the amount of his child support arrearage.

On judicial review, we review for errors of law and for substantial evidence and reason. ORS 183.482(8); *Endres v. DMV*, 255 Or App 226, 228-29, 297 P3d 505 (2013). This is not a case in which we could or would accept petitioner's request for *de novo* review. *See* ORS 183.482(8)(a)-(c) (standards of review of agency action do not include *de novo* review); ORS 19.415(3)(b) (authorizing *de novo* review of an "equitable action or proceeding"). We address petitioner's leading arguments without a summary of facts or description of the several proceedings because doing so would be of no benefit to bench, bar, parties, or the public. We reject petitioner's other issues without discussion. We affirm.

Under ORS 25.759(5), the only three permissible bases for contesting the decision to suspend a license are (1) that the arrearage is not greater than three months support or \$2,500; (2) that there is a mistake in the identity of the obligor; or (3) that the person has complied with an arrearage agreement described in statute or a subpoena at issue. The latter two grounds do not apply here. The first ground is at issue insofar as petitioner disputes the arrearage and the authority of the Clackamas County Circuit Court or the Clackamas County District Attorney to determine an arrearage or to act on the arrearage by suspending a license.

We conclude that the 2013 proceedings in the Multnomah case did not preclude the license suspension in this case.¹ After those Multnomah proceedings, the Clackamas County Circuit Court entered a subsequent judgment in 2018, rejecting petitioner's challenges to subsequent child support enforcement orders and determining that the 2013 Multnomah proceedings did not end petitioner's child support, nor preclude future support efforts. The enforcement of that Clackamas judgment was not stayed and is subject to a separate appeal, still pending. Because that judgment was not stayed, it remains effective. That Clackamas judgment suffices as support for the ALJ's determination in this case that petitioner continued to owe subsequent child support and that subsequent support enforcement efforts were not limited by the 2013 Multnomah proceedings. *See* ORS 19.340 to ORS 19.350 (stays by trial court).

Thus, the issues before the ALJ on administrative review reduced to whether petitioner owed at least three months of child support or \$2,500. ORS 25.759(5)(a). The ALJ found that petitioner was subject to an order to pay child support; that he had made a payment; that the district attorney had initiated suspension of petitioner's driver and commercial driver licenses; that petitioner had not entered into a compliance agreement; and that his child support account balance was \$54,707.42. Whatever the differences may be in the accounting of that balance, the difference does not draw into question petitioner's arrearage exceeding three months of support or \$2,500. The ALJ did not lack substantial evidence or reason in reaching

¹ In an order of February 25, 2013, apparently drafted for the court by petitioner and severally signed by the parties, the court ordered:

"The Division of Child Support and District Attorney are to immediately issue vacate orders to clear all prior suspensions of Petitioner[s] licenses. The Department of Motor Vehicles shall abide by the vacate orders and restore all of Petitioner[s] driving privileges and clearances to their pre-suspension statuses. *Unless a suspend order issues from the court, Petitioner[s] licenses shall not be suspended based on any child support or arrears.*"

(Emphasis added.)

On September 26, 2013, the parties signed a Stipulated Supplemental Judgment, entered in Multnomah County Circuit Court, that terminated the support judgment in the Multnomah case and satisfied the arrearages petitioner owed under that judgment.

her conclusions leading to the suspension of petitioner's licenses.

Affirmed.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DIVISION OF CHILD SUPPORT**

RECEIVED
STATE COURT ADMINISTRATOR
DEC 16 2019
SUPREME COURT
COURT OF APPEALS

In the Matter of Child Support:) FINAL ORDER
Kofi Adomako Ohene Kyei, Obligor)
and) CSP Case No. 410000000181029
Tessica Lynn Swift, Obligee) Reference No. 2019-CSP-25531

History of the Case

On August 21, 2018, the Clackamas County District Attorney (DA) issued a Notice of Intent to Suspend License. On May 29, 2019, the DA issued License Suspension Determinations of the Oregon driver and commercial driver licenses of Kofi Adomako Ohene Kyei (Obligor).¹ On June 25, 2019, Mr. Kyei requested a hearing. The DA referred the matter to the Office of Administrative Hearings on July 25, 2019.

A telephone hearing convened on August 21, 2019, before Elizabeth Jarry, Administrative Law Judge. Mr. Kyei participated in the hearing, testified, and was represented by attorney Todd R. Worthley. Ms. Swift did not participate in the hearing. The DA was represented by Deputy District Attorney Jeremy Gibons, who also testified. On August 23, 2019, ALJ Jarry reopened the hearing record for receipt of additional evidence from the DA. The DA submitted the requested evidence, and the hearing record closed on August 24, 2019.

Issue

Whether Kofi Adomako Ohene Kyei's licenses should be suspended. ORS 25.750 through 25.783 and OAR 137-055-4420.

Evidentiary Rulings

Exhibits 1 through 5 were admitted into the record without objection. Exhibit 6, which is the referral update submitted by the DA after the hearing, was timely received and admitted into the record. If any party objects to the admission of Exhibit 6 into the record, the party must send a written objection to the administrative law judge and the other parties within seven days from the date this Final Order is issued. If no such objection is received or sustained, Exhibit 6 will remain in the record.

¹ The DA submitted two License Suspension Determinations with the referral. OAR 137-055-4420 provides, in part:

(4) The administrator will begin the license suspension process by giving written notice to the obligor by regular mail. If the issuing agency or agencies have addresses listed for the obligor other than the address in the administrator's records, the administrator will send copies of the notice to the address in the administrator's records and to each address in the records of the agencies holding licenses. The notice to the obligor will specify:
* * * *

(9) If an obligor holds more than one license, any determination regarding suspension of one license is sufficient to suspend any other license.

In the Matter of Child Support: Kofi Adomako Ohene Kyei and Tessica Lynn Swift

Findings of Fact

- (1) Kofi Adomako Ohene Kyei and Tessica Lynn Swift are the parents of Clare A. Swift, age 15.
- (2) In 2006, Mr. Kyei was ordered to pay \$735 of monthly child support for Clare to Ms. Swift in Multnomah County Circuit Court of the State of Oregon case number 0406-66556.
- (3) An Order to Vacate Suspensions and Restore Petitioner Licenses (Order to Vacate) in case number 0406-66556, signed in the Multnomah County Circuit Court on February 20, 2013, vacated all prior suspensions of Mr. Kyei's licenses. The Order to Vacate further provided, "Unless a suspend order issues from the court, Petitioner licenses shall not be suspended based on any child support or arrears."
- (4) A Stipulated Supplemental Judgment, entered in Multnomah County Circuit Court on September 26, 2013, terminated the support judgment in case number 0406-66556 and satisfied the arrearages owed under that judgment.
- (5) On December 30, 2014, the DA received an application for child support services.
- (6) An Order Establishing Child Support (Order) in case number 17DR13435, entered in the Clackamas County Circuit Court of the State of Oregon on June 26, 2017, requires Mr. Kyei to pay \$995 per month for the support of Clare. The Order also requires Mr. Kyei to pay a lump sum past support of \$29,850 for the period December 30, 2014 through May 31, 2017.
- (7) In June 2017, the Division of Child Support (DCS) began providing billing services on the case. DCS added the lump sum past support to the account balance.
- (8) In August 2017, Mr. Kyei filed an Appeal of Support Order and Motion to Stay Order in the Clackamas County Circuit Court.
- (9) A General Judgment Dismissing Appeal and Denying Challenges to Garnishment, signed in the Clackamas County Circuit Court on September 27, 2018, dismissed Mr. Kyei's appeal of the Order and denied his challenge to garnishment.
- (10) In August 2018, the DA initiated the suspension of Mr. Kyei's driver and commercial driver licenses. Mr. Kyei's child support account balance was \$44,775. Since June 2017, Mr. Kyei made one support payment of \$450 in February 2019.
- (11) In August 2019, Mr. Kyei's child support account balance was \$54,707.42.
- (12) Mr. Kyei has not entered into a compliance agreement with the DA.
- (13) Mr. Kyei holds Oregon driver and commercial driver licenses, number 8797194.

Conclusion of Law

The License Suspension Determinations are affirmed, and Kofi Adomako Ohene Kyei's Oregon driver and commercial driver licenses, number 8797194, shall be suspended.

Opinion

ORS 25.750 provides, in part:

(1) All licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession or to use a particular occupational or professional title, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses or permits issued by the Department of Transportation and recreational hunting and fishing licenses, as defined by rule of the Department of Justice, are subject to suspension by the respective issuing entities upon certification to the issuing entity by the administrator that a child support case record is being maintained by the Department of Justice, that the case is being enforced by the administrator under the provisions of ORS 25.080 and that one or both of the following conditions apply:

(a) That the party holding the license, certificate, permit or registration is in arrears under any child support judgment or order, in an amount equal to the greater of three months of support or \$2,500, and:

(A) Has not entered into an agreement with the administrator with respect to the child support obligation; or

(B) Is not in compliance with an agreement entered into with the administrator[.]

OAR 137-055-4420 provides, in part:

(1) For the purposes of this rule, "license" means any of the licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses and permits issued by the Department of Transportation under ORS chapter 807, and all permanent and fee-based annual hunting and fishing licenses issued by the Oregon Department of Fish and Wildlife.

(2) The administrator may begin the process to suspend an obligor's licenses if:

(a) The obligor has an order or judgment to pay child support, regardless of whether that order or judgment is currently accruing support;

(b) The administrator has been providing services on the case pursuant to ORS 25.080 for at least three months;

(c) The obligor owes arrears in an amount equal to the greater of three months of support or \$2500;

(d) The obligor and administrator have not entered into an agreement as described in section (10), or there is an agreement but the obligor is not in compliance with the agreement; and

(e) The obligor has not made voluntary payments, or payments by income withholding, every month for the last three months greater than the current support amount, or if there is no longer an order or judgment for current support, equal to the amount of the most recent order for current support. This criterion does not apply to payments resulting from garnishment, tax offset, or any other enforcement action other than income withholding;

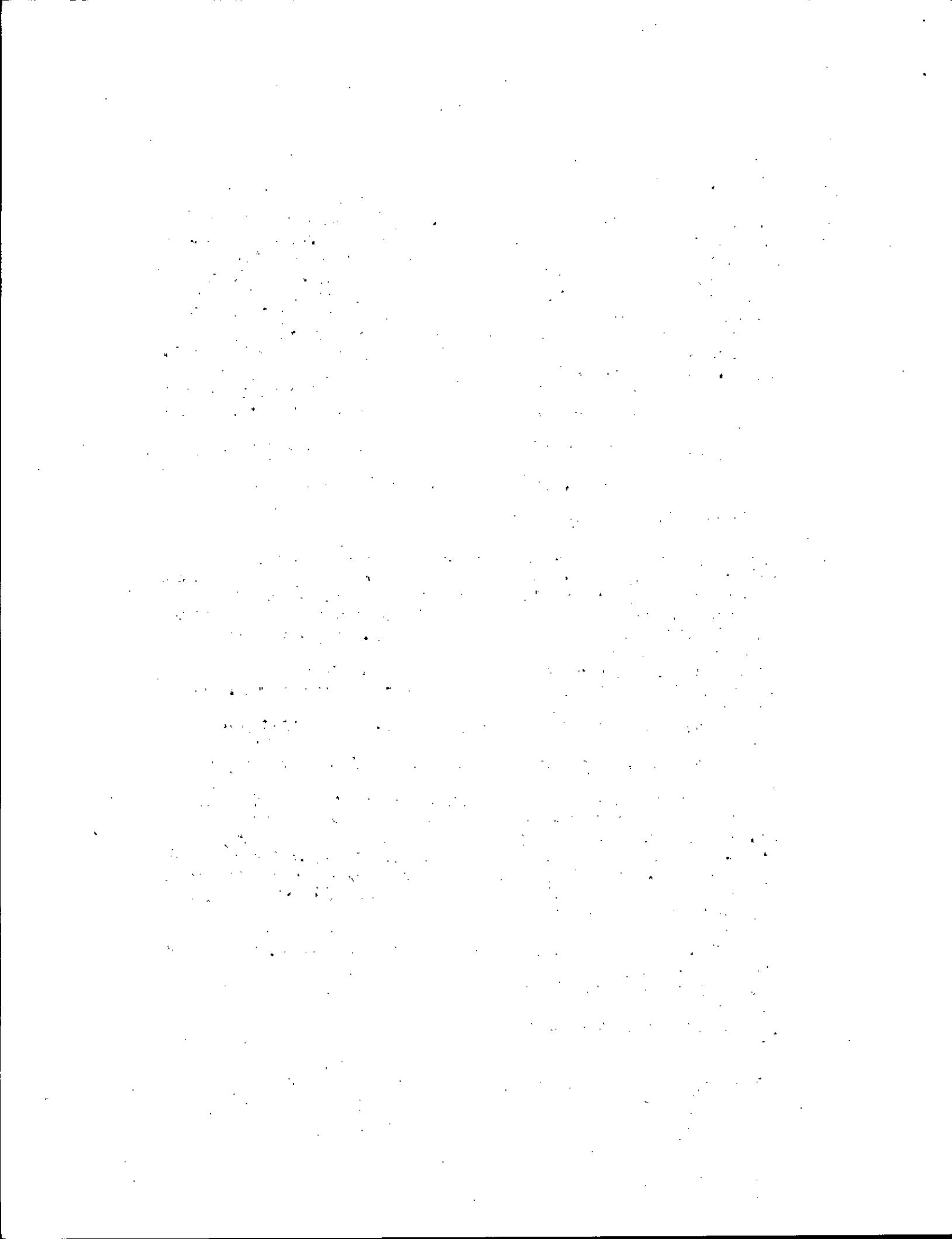
* * * * *

(5) The obligor may contest the suspension within 30 days of the notice described in section (4) of this rule only on the grounds that:

(a) The obligor owes arrears less than or equal to the greater of three months of support or \$2,500; or

(b) There is a mistake in the obligor's identity.

* * * * *



(10) The administrator may enter into an agreement with the obligor, the obligor's compliance with which will preclude suspension of the obligor's license[.]

Mr. Kyei contended that the Order to Vacate in case number 0406-66556 prohibits the DA from bringing actions to suspend Mr. Kyei's licenses. In 2013, the Stipulated Supplement Judgment terminated the support judgment in case number 0406-66556. The provision related to license suspensions in that case does not apply to the current support obligation in case number 17DR13435.

In August 2018, the month the DA issued the Notice, Mr. Kyei's child support account balance was \$44,775. The amount of arrears exceeded \$2,500 and three times Mr. Kyei's monthly support obligation ($\$995 \times 3 = \$2,985$). Mr. Kyei has not entered into a compliance agreement with the DA. DCS has provided support enforcement services since June 2017, and Mr. Kyei had not made any support payments prior to the DA issuing the Notice. Pursuant to OAR 137-055-4420(2), the DA has the authority to seek the suspension of Mr. Kyei's Oregon driver and commercial driver licenses.

Mr. Kyei objected to the Notice's proposed license suspensions. Pursuant to OAR 137-055-4420(5), his objections must be based on mistaken identity or that he owes arrears of less than \$2,500. Mr. Kyei did not raise either objection. The License Suspension Determinations are affirmed, and Mr. Kyei's Oregon driver and commercial driver licenses are suspended.

Order

The License Suspension Determinations are affirmed, and Kofi Adomako Ohene Kyei's Oregon driver and commercial driver licenses, number 8797194, shall be suspended.

s/ Elizabeth Jarry
Administrative Law Judge
Office of Administrative Hearings

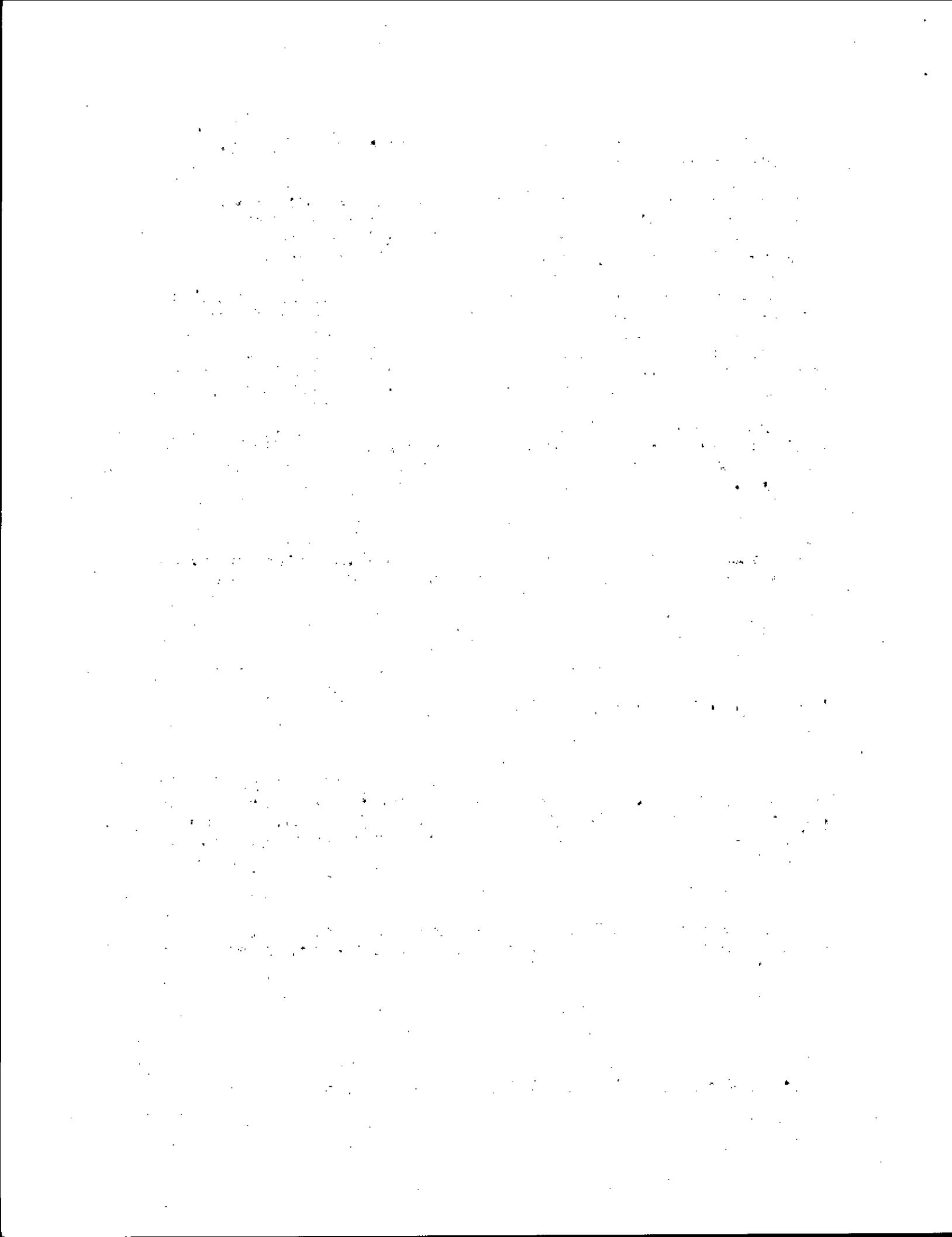
ISSUANCE AND MAILING DATE September 5, 2019

Reinstatement

When, at any time after suspension the conditions resulting in the suspension no longer exist, the Division of Child Support or the District Attorney shall notify the issuing entity, and shall confirm that the license, certificate, permit, or registration may be reinstated, contingent upon the requirements of the issuing entity.

Appeal Rights

Under the provisions of ORS 183.482, you may appeal this order by filing a petition for review in the Oregon Court of Appeals. Your petition must be filed within sixty (60) days of the date this order was mailed.



Rehearing and Reconsideration

Under the provisions of OAR 137-003-0675 and OAR 137-055-2180, you may request reconsideration or rehearing of this order within 60 days from the date this Final Order is mailed. The Administrative Law Judge does not have authority to decide a request for reconsideration or rehearing if

more than 60 days have passed since the Final Order was mailed. Even if you seek rehearing or reconsideration, your 60 day petition for review time in the Court of Appeals is still running. That means that if you seek rehearing or reconsideration instead of filing a petition for review in the circuit court, your appeal time to the circuit court may run out before the rehearing or reconsideration issue is decided. If the rehearing or reconsideration issue is decided against you, then you may have no appeal rights left.

If you decide to request rehearing or reconsideration, your request must be in writing, and must state why you are seeking rehearing or reconsideration. Mail an original copy of your request to the Office of Administrative Hearings; PO Box 14020, Salem, OR 97309-4020. You must also mail copies of your request to the Division of Child Support or District Attorney's office that started the case, and to all other parties in the case. Your request must include a statement that you have mailed complete copies of the request to the Division of Child Support or District Attorney's office, and to all other parties. If you do not mail copies of your request to all parties and include a statement that you have done so, your request will be denied.

If the Administrative Law Judge does not respond to your request for rehearing or reconsideration, your request shall be deemed denied.

Remember that your appeal rights continue to run in the Court of Appeals, whether you or any other party seeks rehearing or reconsideration. If any party does file a petition for review in the circuit court, then we immediately lose our authority to address rehearing or reconsideration, and all issues must then be decided by the circuit court by hearing de novo.

Request to Reschedule

If you failed to appear for the hearing, you may request that the case be rescheduled. To do so, provide a written request to the Division of Child Support or District Attorney's office that started the case explaining all of the reasons why you did not appear and why you want the hearing rescheduled. You must mail copies of your request to all other parties to the case. Your request must include a statement that you have mailed complete copies of the request to all other parties. If a final order by default has not been entered, or if less than 60 days have passed since the notice of hearing cancellation was issued, the Division of Child Support or District Attorney's office will forward your request to the Office of Administrative Hearings. The administrative law judge will defer responding to the request for 10 calendar days after the request is mailed to allow all parties an opportunity to comment on the request. Any comments submitted must be sent to all parties in addition to the administrative law judge, and include a statement that you have done so.

Changes to Personal Information

Pursuant to ORS 25.020, you must notify the court and the child support agency assigned to your case (Division of Child Support or District Attorney), within 10 days whenever there is a change in your address, telephone number, driver's license, employment, or health care coverage information. Failure to timely provide this information could result in you not receiving important notices about your case.

Servicemembers' Civil Relief Act

No party, unless stated above, has notified the Office of Administrative Hearings (OAH) that any participant is a person in military service subject to the Servicemembers' Civil Relief Act (SCRA). The OAH has no reason to believe that a party to this matter is subject to the SCRA. If a party to the proceeding is a service member and did not appear for the hearing, within the service members period of service, or 90 days after his/her termination of service, the OAH will review any request from the service member to reopen or vacate the decision if the service member can show that he or she has a good and legal defense to the claim and can show prejudice resulting from not being able to appear personally in the matter.

IN THE SUPREME COURT OF THE STATE OF OREGON

KOFI ADOMAKO OHENE KYEI,
Petitioner,
Petitioner on Review,

v.

DIVISION OF CHILD SUPPORT,
Respondent,
Respondent on Review.

Court of Appeals
A172588

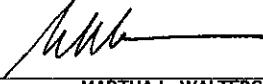
S068981

ORDER DENYING PETITION FOR RECONSIDERATION

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.

DeHoog, J., not participating.


MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
2/24/2022 10:16 AM

c: Patricia G Rincon
Kofi O Kyei

lk

ORDER DENYING PETITION FOR RECONSIDERATION

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAHCIRCUIT COURT
FOR MULTNOMAH COUNTY

13 FEB 22 PM 12:31

FILED

Family Law Department:)
In the matter of Minor Child)
Clare Akua Kyei Swift)
)

Case No.: 0406-66556

Kofi Kyei)
)Petitioner)
)ORDER TO VACATE SUSPENSIONS
AND RESTORE PETITIONER
LICENSESand)
)Tessica Lynn Swift)
)Respondent)
)

ENTERED

FEB 25 2013

IN REGISTER BY KH

Based on the stipulation of the parties below, the court orders filed on 04/17/2009,

05/06/2009, 07/01/2011 and the consistent court record against any suspension of

Petitioner's licenses in this matter until further order of the court on that issue;

THE COURT HEREBY ORDERS AS FOLLOWS:

The Division of Child Support and District Attorney are to immediately issue vacate orders to clear all prior suspensions of Petitioner licenses. The Department of Motor Vehicles shall abide by the vacate orders and restore all of Petitioner driving privileges and clearances to their pre-suspension statuses. Unless a suspend order issues from the court, Petitioner licenses shall not be suspended based on any child support or arrears.

SIGNED:

Nehi Kyei

Tessica Kyei

Dated this 15 day of MAY, 2012

Dated this 14 day of May, 2012

Dated this ____ day of ____, 2012

Judge

Dated this 20 day of Feb, 2013

ORDER TO VACATE SUSPENSION AND RESTORE LICENSE

Kofi Kyei, Petitioner
P.O. Box 25253
Portland, OR 97298-0253

769

APPENDIX E

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Ninth Amendment of the US Constitution (Unenumerated Rights)

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

The Fourteenth Amendment of the US Constitution, Section One

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Commerce Clause of the US Constitution, Article 1, Section 8, Clause 3

The commerce clause delineates the fundamental power specifically delegated to the United States Congress: "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes".

The Declaration of Independence July 4, 1776

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness.

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

49 USC Section 31308

Federal Commercial Driver's License

United States Code - Federal Law

49 CFR Parts 300-399

Federal Motor Carrier Safety Administration (FMCSA)

Code of Federal Regulations

Oregon Revised Statutes (ORS)

25.084

(1) The administrator may provide support enforcement services as described in ORS 25.080 only if support rights have been assigned to the state or if a person has provided a written application to the administrator that:

- (a) Is signed by the person;
- (b) Includes the last-known addresses of the obligor and the obligee; and
- (c) Indicates that the person is applying for child support services.

25.287

(1)

- (f) If the court, the administrator or an administrative law judge finds that more than three years have elapsed, or such shorter cycle as determined by rule of the department, the court, the administrator or the administrative law judge shall

modify the support order to bring the support obligation into substantial compliance with the formula established under ORS 25.275, regardless of whether there has been a substantial change in circumstances since the support obligation was last established, modified or reviewed. Proceedings by the administrator or administrative law judge under this subsection shall be conducted according to the provisions of ORS 25.513 and 25.527.

25.750

(1) All licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession or to use a particular occupational or professional title, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses or permits issued by the Department of Transportation and recreational hunting and fishing licenses, as defined by rule of the Department of Justice, are subject to suspension by the respective issuing entities upon certification to the issuing entity by the administrator that a child support case record is being maintained by the Department of Justice, that the case is being enforced by the administrator under the provisions of ORS 25.080 and that one or both of the following conditions apply:

(a) That the party holding the license, certificate, permit or registration is in arrears under any child support judgment or order, in an amount equal to the greater of three months of support or \$2,500, and:

- (A) Has not entered into an agreement with the administrator with respect to the child support obligation; or
- (B) Is not in compliance with an agreement entered into with the administrator; or
- (b) That the party holding the license, certificate, permit or registration has failed, after receiving appropriate notice, to comply with a subpoena or other procedural order relating to a parentage or child support proceeding and:
 - (A) Has not entered into an agreement with the administrator with respect to compliance; or
 - (B) Is not in compliance with such an agreement.

25.759

- (5) That the only bases for contesting the suspension are:
 - (a) That the arrears are not greater than three months of support or \$2,500;
 - (b) That there is a mistake in the identity of the obligor;
 - (c) That the person subject to the suspension has complied with the subpoena or other procedural order identified in subsection (3) of this section; or
 - (d) That the person subject to the suspension is in compliance with a previous agreement as provided for by ORS 25.750 to 25.783.

183.482

- (7) Review of a contested case shall be confined to the record, and the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of disputed allegations of irregularities in procedure before